

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED	
DATE	<u>NOV - 8 2011</u>
<u>5:02</u>	<u>0'Clock P.M.</u>
Sandra K Markham, CLERK	
BY:	<u>Becky Hamilton</u>
	Deputy

DIVISION: PTB

SANDRA K MARKHAM, CLERK

HON. WARRAN R. DARROW

BY: Becky Hamilton, Deputy Clerk

CASE NO. V1300CR201080049

DATE: November 8, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Yavapai County Attorney (e)

(For Plaintiff)

Plaintiff

vs

JAMES ARTHUR RAY

Thomas K. Kelly (e)

(For Defendant)

D-1

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLEST & OLSONG LLP (e)

(For Defendant Pro Hac Vice)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

Pre-Sentence

Christy Harrington

START TIME: 9:06 a.m.

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
Kathy Durrer, State's Assistant
Tom Kelly, Counsel for Defendant
Luis Li, Pro Hac Vice Counsel for Defendant
Truc Do, Pro Hac Vice Counsel for Defendant

At 9:06 a.m., Court convenes with the State, Defendant and Counsel present.

Court and Counsel discuss the Defendant's Motion to Strike Aggravating Circumstance, filed November 3, 2011.

IT IS ORDERED the State shall be permitted the time to file a response to the Defendant's motion.

The State agrees to file a response by November 14, 2011, at 5:00 p.m.

The Defense requests that the testimony throughout this proceeding be limited to the four alleged aggravating circumstances as set forth on page 11 of the State's pre-sentence memorandum.

The Defense addresses page 11 of the States pre-sentence memorandum, where the State lists aggravating factors. Counsel objects to any testimony beyond the 4 factors listed and also objects to number 2 for the reasons stated on the record.

The State intends to respond to the Defendant's pre-sentence memorandum.

IT IS ORDERED the objection of the Defense is overruled.

At 9:15 a.m., Kristina Tyree Bivins is sworn and presents testimony.

The State examines the witness.

The State moves to admit Exhibit 1141 into evidence. There being an objection by the Defense, **IT IS ORDERED** the objection is overruled.

The State continues examination of the witness.

The Court directs all parties to return at 10:45 a.m.

~* ~* ~* ~* 10:31 a.m., Recess ~* ~* ~* ~*

At 10:48 a.m., Court reconvenes with all previously noted parties present. Kristina Tyree Bivins is on the witness stand.

The State continues examination of the witness.

The State moves to admit Exhibit 1139 into evidence. There being an objection by the Defense, **IT IS ORDERED** the objection is overruled.

The State continues examination of the witness.

The State moves to admit Exhibit 1140 into evidence. There being an objection by the Defense, **IT IS ORDERED** overruling the objection and Exhibit 1140 is **admitted**.

The State continues examination of the witness.

At 11:25 a.m., The Defense cross examines the witness.

At 11:58 a.m., the witness is excused until after the lunch recess.

IT IS ORDERED the request to seal medical records is **granted**.

The Court clarifies its earlier ruling on the Defendant's Motion to Strike; the Court did not rule based on timeliness. The State shall file a response by 5:00 p.m., November 14, 2011.

The Court directs all parties to return after the lunch recess at 1:20 p.m.

~* ~* ~* ~* 12:04 p.m., Recess ~* ~* ~* ~*

At 1:30 p.m., Court reconvenes with all previously noted parties present. Kristina Tyree Bivins is on the witness stand.

The Defense concludes cross examination of the witness.

At 1:31 p.m., the State examines the witness on redirect.

At 1:53 p.m., the Defense examines the witness on follow up.

At 1:59 p.m., the State examines the witness on follow up.

The witness is excused and exits the courtroom.

At 2:03 p.m., Julia Bunker enters the courtroom, is sworn and presents testimony.

The State examines the witness.

The State moves to admit Exhibit 1147 into evidence. There being no objection, Exhibit 1147 is **admitted**.

IT IS ORDERED Exhibits 1139, 1140 and 1141, offered prior to recess, are **admitted**.

The State continues examination of the witness.

The State moves to admit Exhibit 1164 into evidence. There being no objection, **IT IS ORDERED** Exhibit 1164 is admitted for demonstrative purposes and the record shall be a photograph of Exhibit 1164, which shall be **admitted** as Exhibit 1167.

The parties agree that the demonstrative exhibits will be released upon the State providing the photographs of the exhibits.

The State continues examination of the witness.

The State moves to admit Exhibit 1149 into evidence. There being an objection by the Defense, **IT IS ORDERED** the Defense shall be allowed to review the disc prior to admission. The State has provided the foundation for admission.

The State continues examination of the witness.

The State moves to admit Exhibit 1166 into evidence. There being no objection, **IT IS ORDERED** Exhibit 1166 is admitted for demonstrative purposes and the record shall be a photograph of Exhibit 1166, which shall be **admitted** as Exhibit 1168.

The State continues examination of the witness.

The State moves to admit Exhibit 1165 into evidence. There being no objection, **IT IS ORDERED** Exhibit 1165 is admitted for demonstrative purposes and the record shall be a photograph of Exhibit 1165, which shall be **admitted** as Exhibit 1169.

The State continues examination of the witness.

The Court directs all parties to return at 3:25 p.m.

~* ~* ~* ~* 3:06 p.m., Recess ~* ~* ~* ~*

At 3:31 p.m., Court reconvenes with all previously noted parties present. Julia Bunker is on the witness stand.

The State continues examination of the witness.

The State presents the photographs which were previously admitted as Exhibits 1167, 1168 and 1169.

At 4:06 p.m., the Defense cross examines the witness.

At 4:37 p.m., the State examines the witness on redirect.

The witness is excused and exits the courtroom.

At 4:37 p.m., Margaret Gean Clancy enters the courtroom, is sworn and presents testimony.

The State examines the witness.

The Court instructs all parties to return tomorrow, November 9, 2011, by 9:00 a.m.

Court adjourns at 5:02 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for the Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for the Brown Family (e)
Stone & Magnanini, Co-Counsel for the Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for the Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, Tm TV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel for KTVK-TV (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Prescott Superior Court